IN THE HIGH COURT OF JUDICATURE AT BOMBAY
Criminal Appellate Side

Criminal Writ Petition No. 21 of 2002

Shri Inderchand Tarachand Jain
Age 47 years, Occ: business
residing at Rajgurunagar, Tal.Khed
Dist. Pune ..Petitioner

vs.

1. Shri Prakash Motilal Bhansali
   Age 45 years,Occ: business
   residing at Bhansali Wada
   Near Water Tank, Rajgurunagar
   Khed
2. State of Maharashtra ..Opponent

Mr.Anil Subramaniam for petitioner
Mr.K.V.Saste,A.P.P. for respondent no.2

CORAM: S.C.DHARMADHIKARI J.
20th April, 2007

ORAL JUDGMENT:

1. By this petition under Articles 226 and 227 of the Constitution of India read with sec.482 of the Code of Criminal Procedure, the petitioner/original complainant has challenged the order dated 27th September, 2001 in Crim.Misc, Application No.58 of 2001 passed by the learned Additional Sessions Judge, Pune.

2. It is not in dispute that the above Crim.Misc.Application was preferred for condonation of delay. The petitioner before me preferred an appeal

against the order dated 14th March, 2001 in Crim.Misc.Application No. 215 of 2000 delivered by Judicial Magistrate, First Class, Khed, Rajgurunagar. That order dismissed the application preferred by the petitioner/original complainant alleging commission of offences which are punishable under sec.211 and 463 of the I.P.C.

3. In the opinion of the learned J.M.F.C., the applicant/original complainant would not be in a position to maintain and file the complaint with regard to the subject offence and it is only the concerned Court which can set the criminal law in motion.

4. Aggrieved by this finding and order the petitioner/applicant challenged its correctness by way of an appeal. However, it is his case that when the papers were forwarded to his Counsel initially advice was given to file a criminal revision application. Subsequently, however, the Counsel opined that remedy is to file the substantive appeal. That appeal was filed but unfortunately it was delayed. Hence, the above Crim.Misc.Application was instituted praying for condonation of delay in filing this appeal. That application having been rejected by the impugned order, the petitioner has invoked the constitutional as well as

inherent jurisdiction of this Court.

5. I have heard the learned Counsel for the parties and with their assistance perused the criminal Misc.Application and the impugned order.

6. In my view, in the peculiar facts of this case, delay ought to have been condoned. A hyper technical view has been taken by the learned Additional Sessions Judge, Pune. The learned Judge does not dispute that the remedy of the petitioner was to file an appeal nor does he dispute that it was delayed on account of wrong advice given by the counsel initially. The learned Judge’s insistence thereafter to have an affidavit of the Advocate on record was not warranted at all. Once the application was filed through the Advocate who owned up his mistake, then, it was the plain duty of the Court to have adjudicated the matter on merits by giving an opportunity to both sides to canvass their submissions. A justice oriented approach is called for and not a technical view of the matter. Ultimately, if interest of justice demands then the delay ought to be condoned.

7. Having perused the application, I have no doubt in my mind that the learned Judge committed an error apparent on the face of the record in refusing to condone the delay.

He was aware of the liberal principles but committed same mistake which he ought not to have committed. The delay has been satisfactorily explained and there is no reason to disbelieve the version of the Advocate of the applicant.

8. Consequently the criminal writ petition succeeds. Rule is made absolute in terms of prayer clause (a). Delay in filing the appeal against the order dated 14th March, 2001 in Crim.Misc.Application No.215 of 2000 stands condoned. Appeal is restored to file of the concerned Appellate Court for disposal on merits and in accordance with law. In the facts and circumstances of this case, there shall be no order as to costs. The lower Appellate Court should endeavour and dispose of the appeal as expeditiously as possible. Needless to state that I have not gone in to the merits of the controversy and all the contentions of both sides on the same are kept open.

(S.C.DHARMADHIKARI J.)